

(2019) 10 SHI CK 0051

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petitions(M) No. 1908 1909, 1910 Of 2019

Surender Kumar And Ors

APPELLANT

Vs

State Of Himachal Pradesh And Ors

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 504, 506

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(i)

Citation : (2019) 10 SHI CK 0051

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Manoj Pathak, Shiv Pal Manhans, Raju Ram Rahi, Tejender Verma

Final Decision : Allowed

Judgement

Chander Bhusan Barowalia, J

1. The present bail applications have been maintained by the petitioners under Section 439 of the Code of Criminal Procedure seeking their release in case FIR No. 107 of 2019, dated 06.09.2019, under Sections 504 and 506 IPC read with Section 34 IPC and Section 3(i) of the SC&ST Act, registered in Police Station Anni, District Kullu, H.P.

2. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. They are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping them behind the bars for an unlimited period, so they be released on bail.

3. Police report stands filed. As per the prosecution story, on 06.09.2019 Shri Daulat Ram (complainant) made a written complaint to the police and stated that he is Headmaster and in 2006 purchased 0-3 biswas of land from one Shri

Gumatu Ram and the petitioner used to lay their claim over the said land without any reason. On 04.09.2019, at about 01:30 p.m., the petitioners fenced the path leading towards the fields of Shri Gumatu Ram. When Smt. Geeta Devi, daughter-in-law of Shri Gumatu Ram, in order to go to the fields, tried to uproot the said fencing, and petitioners Surender Kumar and Mast Ram came armed with darat and axe, so a quarrel ensued and ultimately Smt. Geeta Devi had to flee. Petitioner Moru Devi kept a secretive vigil and thereafter, they all entered the courtyard of Saayal and started brandishing the weapons. The petitioner threatened to do away with the life of Saayal and also said the land of the complainant does not belong to him. The petitioner used castiest remarks against the complainant and also threatened to demolish his house. Upon the complaint, police registered a case under the apt provisions of law and investigation ensued. Police prepared the spot map and also recorded the statements of the witnesses. Police photographed and videographed the spot and also obtained relevant records qua the caste of the complainant and the petitioners. The petitioners thereafter absconded and they moved bail applications, however the same was rejected, so the petitioners were arrested on 05.10.2019. The petitioners were medically examined and now interrogation from the petitioners is complete. As per the police, nothing is to be recovered from the police and custody of the petitioners is not required for interrogation. Lastly, it is prayed that the bail application of the petitioners be dismissed, as the petitioners committed serious offence. There is possibility that in case at this stage they are enlarged on bail, they may flee from justice. The petitioners can also tamper with the prosecution evidence, so their applications be dismissed.

4. I have heard the learned Counsel for the petitioners, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

5. The learned Counsel for the petitioners has argued that the petitioner have been falsely implicated in the present case. He has further argued that the petitioners are residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has further argued that no fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period, as nothing is to be recovered from them and their custody is not required by the police. Therefore, the petitions may be allowed and the petitioners may be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioners have committed a serious offence and initially they evaded their arrest, so at this stage, in case they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice. He has further argued that petitioners could jump over the bail, in case granted. He has prayed that the bail applications of the petitioners be dismissed.

6. In rebuttal the learned Counsel for the petitioners has argued that the petitioners cannot be kept behind the bars for an unlimited period, especially

when nothing is to be recovered from them and their custody is not at all required by the police, so the applications be allowed and the petitioners be enlarged on bail.

7. At this stage, considering the fact that the petitioners are residents of the place neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, nothing is to be recovered from them, their custody is not at all required by the police for interrogation or investigation, they are ready and willing to abide by the terms and conditions of bail, if so granted, the petitioners cannot be kept behind the bars for an unlimited period and also considering the overall material, which has come on record, and without discussing the same at this stage, this Court finds that the present is a fit case where the judicial discretion to admit the petitioners on bail is required to be exercised in their favour. Accordingly, the petitions are allowed and it is ordered that the petitioners, who have been arrested by the police, in case FIR No. 107 of 2019, dated 06.09.2019, under Sections 504 and 506 IPC read with Section 34 IPC and Section 3(i) of the SC&ST Act, registered in Police Station Anni, District Kullu, H.P., shall be released on bail forthwith in this case, subject to their furnishing personal bonds in the sum of Rs. 20,000/- (rupees twenty thousand) each with one surety each in the like amount to the satisfaction of learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P./learned Additional Chief Judicial Magistrate, Rampur, District Shimla, H.P. The bail is granted subject to the following conditions:

(i) That the petitioners join the investigation and will appear before the learned Trial Court/Police/authorities as and when required.

(ii) That the petitioners will not leave India without prior permission of the Court.

(iii) That the petitioners will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Investigating Officer or Court.

8. In view of the above, the petitions are disposed of.